

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>RONALD NEAGLE</b>	)	
Claimant	)	
VS.	)	
	)	
<b>FERROLOY FOUNDRY INC.</b>	)	Docket No. 198,507
Respondent	)	
AND	)	
	)	
<b>AETNA CASUALTY &amp; SURETY COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from the December 3, 1997, Award and the December 10, 1997, Nunc Pro Tunc entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument on June 24, 1998.

**APPEARANCES**

Joseph Seiwert of Wichita, Kansas appeared for claimant. Elizabeth A. Boldt of Lenexa, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Appeals Board considered the record and adopted the stipulations listed in the December 3, 1997, Award.

**ISSUES**

Claimant asked for review and modification of the agreed Award entered November 13, 1995, as to the nature and extent of claimant's disability. Specifically, he contends the Award should be modified to grant a work disability. Claimant also seeks an award for his attorney's fees if there is no award of additional disability compensation. Respondent lists average weekly wage and whether claimant was disabled for a period of

at least one week from earning full wages as issues, but only if the Board determines that a work disability would otherwise be due. Respondent does not dispute the agreed Award based upon the stipulated impairment of function.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the Award by the Administrative Law Judge should be affirmed. The Appeals Board further finds that claimant should be awarded his attorney's fees.

This claim arises from a June 17, 1994, back injury claimant suffered while working for respondent. Claimant continued to work for respondent at his regular job but with restrictions. After 2½ years, claimant alleged that portions of his job exceeded those restrictions. Claimant left his full-time job with respondent for a part-time position and was subsequently terminated. Claimant alleges he is entitled to modification of his original disability award, which was based upon his functional impairment, to an award based upon a higher work disability. Respondent denies claimant's allegation that it was not willing to accommodate claimant's restrictions and further denies that claimant's job required him to exceed his restrictions.

Claimant's position with respondent was as a Vice-President. His job title was later changed to General Manager but his duties remained essentially the same. Claimant continued to work in these positions for 2½ years post-accident. The record does not reflect that claimant ever missed work due to his injury during this period. Claimant resigned his position with respondent effective February 15, 1997. His letter of February 4, 1997, documents that claimant's reasons for leaving his position were primarily unrelated to his back injury. Furthermore, the Appeals Board finds that claimant's positions as Vice-President and General Manager allowed him considerable latitude in delegating job duties. Claimant was also in a position to hire additional personnel. Because of this, the Appeals Board finds that claimant's job did not require claimant to exceed his physical restrictions. To the extent claimant may have exceeded those restrictions, if in fact he did, it was done voluntarily and was not a condition of employment.

The Appeals Board finds that claimant did not leave his job due to his work-related injury. Claimant voluntarily resigned from his full-time position as General Manager. Accordingly, he retains the ability to perform that job and is not entitled to a work disability award.

Claimant requested his attorney's fees be awarded paid by respondent for this post-award proceeding for review and modification pursuant to K.S.A 44-536(g). The Administrative Law Judge did not address this issue but the parties have agreed that the Board may now address it for the first time on appeal. Claimant's counsel seeks approval for attorney's fees in the amount of \$1,375 based upon 11 hours of work at the rate of \$125 per hour. Respondent does not dispute the number of hours requested nor the

hourly rate. Respondent does dispute there being any award against it for attorney's fees because of the evidence against this being a case where review and modification is merited. The Appeals Board finds that claimant is entitled to an award of attorney's fees. The amount requested is reasonable and is approved.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the December 3, 1997, review and modification Award and the December 10, 1997, Award Nunc Pro Tunc, both entered by Administrative Law Judge Jon L. Frobish, should be, and are hereby, affirmed and claimant is also awarded his attorney's fees in the amount requested of \$1,375.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1998.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Joseph Seiwert, Wichita, KS  
Elizabeth A. Boldt, Lenexa, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director